



Comments on “Special Access Notice of Proposed Rulemaking”

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The Small Business & Entrepreneurship Council (SBE Council) appreciates the opportunity to weigh in on the issue of how special access services – that is, dedicated, high capacity transmission links for voice and data traffic – should be regulated.

SBE Council is a membership organization that seeks to influence legislation and public policy to enhance the environment for business start-up and growth. Through advocacy, research and education, SBE Council members and staff convey the importance of small business to innovation, job creation, economic opportunity and the U.S. economy.

Telecommunications policy obviously is quite important to small businesses and entrepreneurs. Indeed, more so now than perhaps ever over the past century. SBE Council has been involved in the debate over telecommunications policy since prior to passage of the Telecommunications Act of 1996, making sure that the small business voice is heard.

Astounding technological advancements in recent times have opened up previously unimaginable opportunities for small businesses to communicate and reach potential customers and clients across the nation and around the globe. Businesses of all types and sizes have a variety of voice and data needs, including, for example, point-to-point communications, long distance services, and high speed Internet access.

The market has changed significantly in a relatively short period of time. In 1991, the Federal Communications Commission (FCC) shifted from rate-of-return regulation to price caps on special access services for incumbent carriers. But as competition spread – due in part to the 1996 Telecommunications Act and because of technological advancements and innovation – the FCC issued a price flexibility order. That 1999 order allowed for price deregulation in metropolitan statistical areas (MSAs) given that the incumbents could point to competitive triggers being met.

A GAO November 2006 report (“FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services”) noted that “some level of pricing flexibility [called Phase I] has since been granted to the four major price-cap incumbents in 215 of the 369 MSAs in the United States and Puerto Rico,” with “full price deregulation [called Phase II] in 112 MSAs.”

This finding should surprise no one. After all, cable companies, CLECs and WiMAX capabilities have moved or are moving into the special access market, expanding competition and choice. Without a doubt, businesses have more choices today than ever before.

Nonetheless, there is a movement to re-regulate this market, that is, to re-impose price caps. Does that make any economic sense?

Those seeking increased regulation cite the GAO report’s price data analysis. But the GAO acknowledges significant shortcomings in data availability, and its findings, based on this incomplete data, hardly buttress the argument for increased regulation. In fact, the GAO found that customers generally are paying less than they did before, including where full competition is at work. The GAO report also did not endorse calls for re-regulation.

As for the fundamental economics at work, government regulation and price controls hardly create the proper climate for the facility/network competition that will benefit business customers.

Deregulation is far preferable for two reasons. First, it shows that government is willing to let the market work, thereby reducing regulatory uncertainty and costs. The telecommunications marketplace is dynamic, innovative and inventive. Whenever the government steps in to regulate, including setting prices, incentives for economic risk taking is diminished. After all, why take the risks to invest and innovate, when the government is dictating prices and, thereby, returns?

That, of course, leads to the second point: the price mechanism signals market players. Even if market prices in some freshly deregulated markets rise, that signals economic opportunity to competitors. So, incumbents must keep these economic facts of life in mind while serving customers in terms of both price and service.

These two points are buttressed by an analysis of the special access market by Scott Wallsten, a senior fellow and director of communications policy studies for The Progress & Freedom Foundation, which was released on July 31, 2007. Wallsten summed up his findings this way:

“Little empirical work carefully evaluates the special access market, and even less research has focused explicitly on the effects of deregulation. This paper attempts to address that gap in the literature by exploring empirically the relationship between the different types of special access deregulation and the number of special access lines provided by the ILECs.

“I find that the share of a state’s population living in regions that have been given Phase 1 or Phase 2 pricing flexibility for dedicated transport / special access is positively and significantly correlated with the number of special access lines. The result suggests that granting pricing flexibility is associated with increased investment in special access facilities by the ILECs.”

Like the GAO, Wallsten notes a lack of complete and reliable data to assess the special access market.

In the end, though, it is obvious that competition is expanding from telephone companies, cable providers and wireless services. Economic theory, history and common sense inform us that competition is better for consumers. Re-regulation in an area like special access services would only undermine innovation, investment and competition, and wind up hurting consumers of such services in the end.

There are no sound economic reasons for the FCC to re-regulate the special access market. Rather, given that businesses in the marketplace face both existing and potential competitors, efforts to accelerate deregulation make the most sense.

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